

BEFORE THE FAIP POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	No. 75-027
Opinion requested by)	July 2, 1975
State Senator Robert Presley)	
_____)	

BY THE COMMISSION: We have been asked the following question by State Senator Robert Presley:

Senator Presley reports that he has invested \$27,000 with the Sam Armstrong Realty Company in Riverside. This money is invested at ten percent per annum interest and is in the form of promissory notes payable upon demand. Senator Presley states that this investment in no way gives him a voice in the real estate operation.

Senator Presley asks whether there is any possible conflict of interest under existing law with this investment and his duties as a legislator.

CONCLUSION

No conflict of interest arises unless at some time in the future Senator Presley votes on a matter affecting his financial interest.

ANALYSIS

No public official may make a governmental decision in which he has a financial interest. Government Code Section 87100.1/ Two questions are raised in this instance: the nature of the official's interest and the potential governmental decision.

An official has a financial interest within the meaning of Section 87100 if an action in which he participates will foreseeably have a material financial effect distinguishable

^{1/}
All statutory references are to the Government Code unless otherwise noted.

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from its effect on the public generally on any business entity in which the official has a direct or indirect investment worth more than \$1,000. Section 87103(a)

Senator Presley has an investment worth more than \$1,000 in the realty company since the term "investment" in the Act includes debt instruments. Section 82034. His interest is therefore sufficient to bring him within the section. The fact that the Senator's investment does not give him a voice in the real estate operation does not affect the fact that the investment comes within Section 87103(a).

However, no conflict exists until such time as Senator Presley is faced with a governmental decision which would have a material financial effect on the realty company distinguishable from the effect on the public generally. There is no restriction in the Political Reform Act against holding any financial interest. The restriction applies only to decisions made affecting the interest.^{2/} Since no information is given in the opinion request regarding possible decisions, no precise analysis is possible.

In general terms, Senator Presley is prohibited by the Political Reform Act from making or participating in making a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect distinguishable from the effect on the public generally on the realty company. The term "material financial effect" has not been further defined by the Commission, but some guidance is given by the California Supreme Court's views in the case of County of Nevada v. MacMillen, 11 C.3d 662, 673-74 (1974):

A "substantial" conflict or a "material" effect upon economic interests is a conflict or effect which could undermine the foregoing goal [an independent, impartial and honest government] by providing an economic incentive for deciding a particular official matter without regard to its merits, or with regard to its effect upon the official's pocketbook.

The Commission notes that the Political Reform Act is not the only statute regulating conflict of interest, and offers no

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The only remedy for violation of the conflict of interest section of the Act is injunctive relief to set aside the decision or to prevent it from being made. This relief is not applicable to elected state officers or to state legislation. Section 87102.

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opinion as to whether other provisions of law may apply to Senator Presley. See Section 91014.

Approved by the Commission on July 2, 1975. Concurring: Brosnahan, Carpenter, Lowenstein and Miller. Commissioner Waters was absent.



Daniel H. Lowenstein
Chairman